IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 304 of 2003

WITH

COMPANY PETITION No 305 of 2003
COMPANY PETITION No 306 of 2003
COMPANY PETITION No 307 of 2003
COMPANY PETITION No 308 of 2003
COMPANY PETITION No 309 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARSHIL FINANCIAL PVT. LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 304 to 309 of 2003
MRS SWATI SOPARKAR for Petitioner No. 1
MS PJ DAVAWALA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/08/2004

COMMON ORAL JUDGEMENT

These are the petitions filed by six petitioner companies for sanction of a Scheme of amalgamation of first five (the Transferor Companies) with Matrix Logistics Limited (the Transferee Company) under Section 391 read with Section 394 of the Companies Act, 1956.

2. All except one among the Transferor Companies are private limited companies. All of them are currently engaged in investment activities. They belong to the same group of management. The Transferee Company on the other hand, is a closely held limited company that belongs to the same group of management. It was originally promoted with an objective of carrying on the consultancy services and allied activities. However, at present it is also engaged in investment activities. The amalgamation is proposed for the synergic advantages. The petitions give details of the advantages that would flow by virtue of the amalgamation of these companies.

3. The proposed Scheme was approved unanimously by the Equity Shareholders of all the petitioner companies through the consent letters which were put on record alongwith respective applications. There are no secured creditors in case of any of the Transferor Companies. One of the Transferor companies have no unsecured creditors. In case of the unsecured creditors of the other four Transferor companies, all the unsecured creditors have already given their consent letters approving the scheme and the same are put on record. Hence, the meetings of the shareholders and creditors were not required to be held and accordingly they were dispensed with vide the order passed on 25.11.2003 annexed to the petitions as Annexure D.

4. After the petitions were admitted, the same were duly advertised in the Newspapers viz. Indian Express and Loksatta-Jansatta (both Ahmedabad editions) dated 18th December, 2003 and the publication in the Government Gazette was dispensed with as directed in the order dated 02.12.2003. No one has come forward with any objections to the said petitions even after the publication.

5. Notice of the petition of the Petitioner Transferor Companies were served upon the Official Liquidator attached to this Court. The Official Liquidator has submitted his report in Company Petition Nos. 305 & 307 of 2003 filed on 25.07.2004 and 09.07.2004 respectively wherein it is observed that the

Auditors appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of the Company have submitted their report stating that on the basis of the information and explanation given to them and on verification of necessary papers, documents, records, financial statements and books of accounts produced before them, it was reported by them that acts and transactions of the Company were conducted within the object as mentioned in the memorandum of association of the Company and that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members and public interest at large.

6. As far as Company Petition No. 304 of 2003 is concerned, it is observed by the Official Liquidator in his report dated 09.07.2004 that the Auditors appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of the Company have submitted their report stating that on the basis of the information and explanation given to them, and on verification of necessary papers, documents, records, financial statements and books of accounts produced before them, it was reported by them that subject to their remarks of para 7 of their report regarding non-provision of diminution in value of long term investments made by the Company and non provision of doubtful loans, acts and transactions of the Company were conducted within the objects mentioned in the Memorandum of Association of the Company and that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members and public interest at large.

7. As far as Company Petition No. 306 of 2003 is concerned, it is observed by the Official Liquidator in his report dated 09.07.2004 that the Auditors appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of the Company have submitted their report stating that on the basis of the information and explanation given to them, and on verification of necessary papers, documents, records, financial statements and books of accounts produced before them, it was reported by them that subject to their remarks of para 7 of their report, the Company has written off Rs. 26,60,830/- as loan in the Books of Accounts of the Company vide Board Resolutions dated 22.02.2003 and the same was reflected in the audited profit and loss account for the year ended on 31.03.2003, acts and transactions of the Company were conducted within the object as mentioned in the Memorandum of Association of the Company and that the affairs of the

Company have not been conducted in a manner prejudicial to the interest of its members and public interest at large.

8. As far as Company Petition No. 308 of 2003 is concerned, it is observed by the Official Liquidator in his report dated 09.07.2004 that the Auditors appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of the Company have submitted their report stating that on the basis of the information and explanation given to them, and on verification of necessary papers, documents, records, financial statements and books of accounts produced before them, it was reported by them that subject to their remarks of para 7 of their report regarding non provision of doubtful loan of Rs. 44,22,35,114/-, acts and transactions of the Company were conducted within the object as mentioned in the Memorandum of Association of the Company and that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members and public interest at large.

9. The Court has asked Mrs. Swati Soparkar, learned advocate appearing for the petitioners to explain the remarks made by the Official Liquidator in his report on the basis of the report of the Chartered Accountant in the above referred three Transferor Companies. Mrs. Swati Soparkar has submitted that the Companies' Chartered Accountant has made the said remarks and the same were reflected in the audited Books of Accounts which were submitted by the respective Company along with the present applications. She has further submitted that as far as the remark made by the Official Liquidator in Company Petition No. 304 of 2003 is concerned, the Company has made investment in Core Healthcare Limited (21,000/- Equity Shares of Rs. 10/- fully paid up). No Provision has been made for the diminution in the value of Long Term Investments made by the Company because diminution was of temporary nature and, therefore, the Company did not consider it necessary to provide for provision of such diminution. Mrs. Swati Soparkar has further submitted that the Company has given loan of Rs. 18,12,999/- to M/s. Matrix Logistics Limited, the Transferee Company with whom the petitioner Company is sought to be amalgamated.

10. With regard to the Official Liquidator's remark in Company Petition No. 306 of 2003 is concerned, Mrs. Swati Soparkar has submitted that during the year 2002 2003, loan amounting to Rs. 26,60,830/- given to Mr. Sushilkumar Handa had been written off as per Board

Resolution dated 22.02.2003 and the said Resolution was also placed on record of the Court. As per the said Resolution, the Board has discussed the issue and since the amount has been pending for long and no payment has been received since long, the Board has decided to write off the said amount in the books of Accounts of the Company.

11. As far as Official Liquidator's remark in Company Petition No. 308 of 2003 is concerned, Mrs. Swati Soparkar has submitted that the Company has given loan of Rs. 44,22,35,114/- to M/s. Matrix Logistics Limited (Transferee Company) No Provision have been made as the recovery efforts were under progress and in any case, the Company is sought to be amalgamated with the said Company.

12. With regard to the Court's query about the exchange ratio proposed in the scheme, Mrs. Soparkar has submitted that the Chartered Accountant vide his report dated 11.08.2003 on exchange ratio for the scheme of amalgamation of Transferor Companies with the Transferee Company has discussed at length the various methods of valuation for the purpose of determination of the exchange ratios. The Chartered Accountant has observed in his report that, normally, valuation of shares for the purpose of determining the exchange ratio in amalgamation is made on a consideration of some or all of in number of relevant factors like dividend paid, growth prospects, value of net assets, earning power etc. are the factors on which the valuation is tested. It was also stated that the answer to the question as to whether some or all of these factors can be applied depends on the circumstances of each cases. The Chartered Accountant was of the view that in the present proposal, where the proposal is for an amalgamation of non-manufacturing companies the issue of determining of exchange ratio cannot obviously proceeds merely on historical profits or assets basis. It was further observed that while summing up and taking into account all the relevant facts, as discussed herein above and as per the information and explanations given by the management of the companies regarding present business scenario, the net assets value and future earning capacity of the transferee Company are the main parameters which should be considered in determination of the fair exchange ratio. Mrs. Soparkar has, therefore, submitted that once the exchange ratio is fixed by the Chartered Accountant on the basis of the standard method of valuation, looking to the facts of the Companies which are to be amalgamated and since the said ratio is unanimously approved by the shareholders of all

the respective Companies, there is no reason not to accept the said ratio.

13. Notice of the petition has been served upon the Central Govt. and Smt. P.J. Davawala, Additional Standing Counsel appeared for the Central Govt. Smt. Davawala has informed the Court and put on record the letter from the Registrar of Companies of Gujarat dated 5th May 2004 alongwith the Regional Director's letter dated 22nd April 2004 indicating that the Central Govt. does not have any objection to the proposed scheme of amalgamation.

14. After having heard learned advocate Mrs. Swati Soparkar appearing for the petitioners in all these Company Petitions, Official Liquidator and Smt. P.J. Davawala, learned Additional Standing Counsel appearing for the Central Government and after having gone through the objections and submissions and the scheme documents attached with the petitions, the Court is satisfied that the amalgamation would be in the interest of the Companies and their members and Creditors. It is, however, made clear that at some of the objections raised by the Chartered Accountant in his report pertain to no proceedings which reported to have been initiated nor any adverse finding prima facie could have been given by any statutory authority so far, which can be looked into by the various statutory authorities under the Companies Act as well as under the Income Tax Act. By passing this order, the Court has not stalled any inquiry or any proceedings under the relevant statutes. The Court has taken note of some of these aspects only from the limited angle as to whether the objections are such that the scheme of amalgamation of all the five Transferor Companies with the Transferee Company is required to be disapproved by giving a finding that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to its members or public interest. The Court has found that the objections are not such as to warrant disapproval of the scheme of amalgamation.

15. In view of this discussion, the scheme of amalgamation at Annexure C to each of Company Petitions is hereby sanctioned so as to be binding on all the Equity Shareholders and the Creditors. Prayers in terms of paragraph 15 (A) of all the petitions are, therefore, granted.

16. All these petitions are disposed of accordingly. So far as the costs to be paid to the Central Govt. Standing Counsel is concerned, the Court quantify the

same at Rs. 3,500/- per petition. The same may be paid to the learned Central Govt. Standing Counsel Smt. P.J. Davawala.

Sd/-

[K.A. PUJ, J.]

#Savariya#

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